IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

Crl.Rev.Pet.No. 382 of 2000

CRL.A.27/1999 OF III ADDL.SESSIONS COURT, ERNAKULAM
CC.394/1995 OF JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI

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REVISION PETITIONER/ APPELLANT/ ACCUSED:

AJAYAKUMAR, S/O. KUNJAPPAN,
VALIYAPURAKKAL VEETTIL,
EDAVANAKKAD.

BY ADV. SRI.SANJAI PADIYATH.

RESPONDENT/ RESPONDENT/ COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. K.C. SANTHOSH KUMAR.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 29/10/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B. KOSHY, J.

Crl.R.P. NO.382 of 2000

Dated this the 29th day of October, 2007

Order

Revision petitioner was convicted and sentenced to undergo rigorous imprisonment for one year for offence punishable under section 338 of the Indian Penal Code and rigorous imprisonment for three months for offence under section 279 IPC. Driving licence was also suspended for two years. The prosecution case is as follows:

> "On 21.1.1995 at 3.30 p.m. accused was driving bus bearing No. KL 7/D 3931 along Vypin-Munambam public road from south to north. While the said bus reached near the Sujatha Theatre at Elamkunnapuzha, it hit at the body of Jinsy aged five years who was walking along the western side of the road from north to south. Due to the hit, said Jinsy fell down on the road and the bus ran over her right hand. As a result, her right palm was cut off and her right ribs and shoulder bones were fractured. Since two bus was driven by the accused in a rash and negligent manner, the incident occurred. Thereby, the accused is said to have committed the above mentioned offences."

PW1, an independent witness, gave first information statement that he has witnessed the incident. While he was coming in a vehicle, the child was walking along the western side of the road towards south. A bus bearing registration No. KL 7/D 3931 came from south

and hit at the body of the child. She fell down and tyre of the bus ran over her hand. Only when the persons assembled there pushed the bus behind, the child was taken out and her hand was extensively damaged. PW2 door checker of the bus also stated that the incident happened, but, according to PW2, the child sustained injuries when the child suddenly came to the road. PW3 deposed that he was talking in the bus and he did not see the incident. PW4 became hostile. Considering the evidence of PWs 1 and 2, it was found that the accused was the driver of the bus and his driving was rash and negligent. The above finding was confirmed by the appellate court also. No grounds are made out for interference in the conviction in a revisional jurisdiction. At the same time, we note that the incident occurred in 1995. More than 12 years have elapsed. His driving licence was suspended for two years.

In the above circumstances, I am of the opinion that sentence can be modified. The sentence for offence punishable under section 338 I.P.C. is converted as fine of Rs.1,000/- and sentence under section 279 I.P.C. is also converted as fine of Rs.1,000/-. If the fine amount under both sections is not paid, the

accused is liable to undergo simple imprisonment for two months each.

The criminal revision petition is disposed of accordingly.

J.B.KOSHY
JUDGE

vaa

J.B. KOSHY, J.

Crl.R.P. No.382/2000

Order

Dated:29th October, 2007